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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,666	01/24/2002	Wolfgang Billinger	P67552US0	8422

136 7590 12/09/2004

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EXAMINER
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HOLZEN, STEPHEN A

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/053,666

Applicant(s)

BILLINGER ET AL.

Examiner

Stephen A. Holzen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15, 19-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15, 19-28, 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Response to Arguments***

1. Applicant's arguments filed 10/8/2004 have been fully considered but they are not persuasive.

Regarding the limitation "by gluing": The claims are in the form of "product-by-process" and are not limited to the manipulations of the recited steps, only the structure implied by the steps. "The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from the product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (see MPEP 2113)

Regarding the limitation "synthetic composite material": The applicant's arguments with respect to this limitation are not persuasive. It appears that the applicant has attempted to make the argument that the Hertzberg reference is non-analogous art. The applicant however does not address the two-pronged test for analogous art. "In order to reply on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." (see MPEP 2141.01(a)) The examiner asserts that Hertzberg is in the field of the applicant's endeavor, evidenced in Col. 1, line 22 of the Hertzberg's specification.

The examiner has considered the applicant's declaration and does not find the declaration persuasive. The applicant has not provided testimony that his

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invention was met with initial incredulity and skepticism of experts sufficient to rebut the prima facie case of obviousness. In fact the examiner has been asked to take the applicant's own interpretation of others opinions as evidence to rebut the case of obviousness. Secondly the declaration asserts that the applicant himself has no knowledge of anyone using/making fittings from synthetic composite materials. The examiner is not persuaded by this argument due to the fact that the applicant has not provided any objective evidence to prove the applicants assertion. Therefore the declaration is not persuasive.

Finally the standing of the applicant's Austrian and European applications have no bearing on the patentability in the United States, and do not serve as evidence as non-obviousness.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 15, 19, 20, 24, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's prior art disclosure view of ordinary skill in the art and further in view of Hertzberg.

Re - Claim 15, 27: The applicant discloses a connecting device, a fitting, a bearing, wherein the fitting is secured to a moveable part, the resin transfer molding

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method, and nylon interwoven with the fabric (9) to enhance the impact strength of the article produced (see Page 7, lines 7-13), wherein spoilers, landing flaps and control surfaces are known movable pieces (see applicant's description of prior art). The applicant does not disclose a fitting made of synthetic composite material and wherein said fitting is securing to movable part by gluing. Hertzberg discloses that it is known to manufacture aircraft components with composite synthetic compositions. The applicant's prior art disclosure in view of Hertzberg does not specifically disclose manufacturing a fitting made of a synthetic composite material. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture a fitting as a synthetic composite material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin 125 USPQ 416.

Re - Claims 19 and 20: the applicant's prior art disclosure teaches a device having a reactive material sewn or woven into the carbon fabric (see page 7, lines 7-13), wherein said reactive material is nylon (see page 7, lines 7-13).

Re - Claims 24 and 25: Hertzberg teaches that additional connecting means are well known in addition to gluing. (see Figure 7)

4. Claim 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's prior art disclosure view of ordinary skill in the art and further in view of Hertzberg. The applicant discloses a fitting for connecting a movable part of an aircraft

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with a structural component of an aircraft, a spoiler, a landing flap and a control surface. Hertzberg discloses that it is known to manufacture aircraft components with composite synthetic compositions. The applicant's prior art disclosure in view of Hertzberg does not specifically disclose manufacturing a fitting made of a synthetic composite material. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture a fitting as a synthetic composite material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin 125 USPQ 416. Further the applicant's prior art disclosure in view of Hertzberg does not disclose integrally forming as one piece the movable part and the fitting. However it has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening. In re Hotte 177 USPQ 326, 328 (CCPA 1973). Since it has been held that "integral" including fastening the applicant's prior art in view of Hertzberg reads on the applicant's limitation.

5. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's prior art disclosure in view of Hertzberg, further in view of ordinary skill in the art and further in view of Padden.

The applicant discloses as prior art a fitting for connecting a movable part of an aircraft with a structural component of the aircraft, wherein the movable part is made of

a composite material and wherein the moveable part is a control surface, and wherein the movable part can be one of a spoiler, a landing flap and a control surface.

Hertzberg discloses that it is known to manufacture aircraft components with composite synthetic compositions.

The applicant's prior art disclosure in view of Hertzberg does not specifically disclose manufacturing a fitting made of a synthetic composite material. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture a fitting as a synthetic composite material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin 125 USPQ 416.

Further it would have been obvious at the time the invention was made to use adhesives to bond the fittings to a movable structure as taught by Hertzberg (see Col. 5, lines 8-40).

As disclosed above The applicant's prior art disclosure teaches every aspect of the present invention except where the movable part has an upper covering layer and a lower covering layer and said fitting being arranged and glued there between. Padden discloses a movable part having an upper covering layer and a lower covering layer of fiber reinforced fabric and said fitting being arranged there between. (see Figure 1). It would have been obvious at the time the invention was made to glue a fitting between a upper and lower covering layer for increasing structural rigidity of a movable part.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Holzen whose telephone number is 703-308-2484. The examiner can normally be reached on M-F 7:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703 305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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